The Power to Tax

The U. S. Supreme Court Reverses Itself to Oblige the Landlords

By J. RUPERT MASON

ON February 10, 1941, unnoticed by most newspapers, the U. S. Supreme Court denied a petition for a rehearing in the case of Pacific National Bank v. Merced Irrigation District, an event which involves fundamental economic and governmental policies far beyond the immediate facts. It marks the complete abandonment by our highest Court of the doctrine of dual sovereignty, as it had been interpreted by that Court in scores of previous decisions, ever since McCulloch v. Maryland (1819).

In a nutshell, it means that the sovereign power of the States to tax the value of land is no longer sovereign, but is subject to interference, regulation and control by Congress. The decision of the Supreme Court in Pollock v. Farmers Loan & Trust Co., which holds that Congress cannot tax land values, except subject to the rule of apportionment (which means Congress cannot tax real estate), is still in effect and has not been modified in the least by any subsequent opinions. But, although Congress cannot tax the rental value of land, it can now interfere with the right and duty of a State to tax land values, where the State has authorized one of its governmental agencies to borrow money and pledge the future revenues from taxes as security for the money borrowed.

In Ashton v. Cameron County the Supreme Court in 1937 held squarely that the Constitution grants the Congress no such power, under any clause in the Federal Constitution, and that "Neither consent nor submission by the States can enlarge the powers of Congress." The Court also said in the Ashton decision, "Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted . . . The power 'to establish . . . uniform laws on the subject of bankruptcies,' can have no higher rank or importance in our scheme of government than the power 'to lay and collect taxes'. Both are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the States, while the other is not."

The Merced Irrigation District of California, which petitioned for bankruptcy under the Bankruptcy Act, refused to accept the Ashton decision as binding on it, and took its case to the Supreme Court, which denied the Merced District's petition.

But landlordism never gives up. It was no time until the forces were set in motion to get Congress to amend the Bankruptcy Act regardless of the fact that the Supreme Court held in the Ashton case that Congress was wholly without any power under the Constitution to subject the taxing power of the State to the Bankruptcy clause in the Federal Constitution. With brief hearings in one Committee only, and without debate or even a record vote in the House, the amendment (11 USCA 401-404) was gotten through the Congress and signed by the President. It omitted any mention of State consent, while the former law did call for State consent. The first test case under the new law was decided against the Federal Government by the U. S. District Court, and the Government appealed direct to the Supreme Court. The lower Federal Court construed the Ashton decision as controlling, but the Supreme Court, with several New Deal appointees, made an about face and reversed the District Court, in U. S. v. Bekins. They held the amended Act "not unconstitutional". Soon thereafter, the Act was further amended by Congress to include counties and certain other taxing units of a State, in addition to cities, school, road, irrigation and other districts already included.

This second amendment was signed by the President in 1940 (HR 9139).

Almost immediately, a number of counties, cities and districts of many kinds began filing petitions under the amended Act, mainly those of Florida and California, where the aftermath of the land speculators was heaviest. The new Act differed chiefly from the first in that it had a "separability" clause. Thus, the Court might hold the Act valid as to some units of a State, and invalid as to others. Meanwhile the Supreme Court in California ruled for the first time that all the functions of its Irrigation Districts are considered "Exclusively Governmental", and that each such District and all its properties constitute an indestructible "Public Trust" (Enclave) owned by the State, and that the full rental value, present and future of the land, or as much as may be necessary to repay money lawfully borrowed, is decreed a part of that "Public Trust". Hence if there is any kind of local government that cannot be brought under bankruptcy, it was clear that these districts or "Enclaves" would be held immune. But the Court in finally refusing a hearing, on Feb. 10, 1941, has closed our last chance. The landlords, having lost out in the Ashton case, can now get the ground rent, and the State must step down for them.

So the rule now stands, as interpreted by our Supreme Court, that although Congress is without any power to tax land values, it has the power to put the dead hand (mortmain) on the power and duty of a State to levy and collect taxes on land values, where the State has pledged such taxes as the security for money borrowed by its Governmental agencies.

Also it is now the rule, under existing decisions, that although the Congress has no power to tax the interest from

county, city or district bonds, it has the power to destroy the bonds.

In the Ashton case the Court said: "The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national governments are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause." The Bekins decision, hereinbefore cited, upsets this, utterly.

In the Federalist Essays (No. XXXII) by Hamilton it was recognized that the individual States would "possess an independent and uncontrollable authority to raise their own revenues" on adoption of the Constitution. The only reference to Bankruptcy in any of the Federalist Essays is in No. XLII as follows: "The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question."

It is difficult to imagine a State removing its lands to another State, or being in any sense a "party" intended to be reached by that paragraph. Surely, it was never meant to include the sovereign power of a State to levy and collect taxes on the value of land. But the present members of our Supreme Court have interpreted the Bankruptcy Clause in the Constitution to be broad enough to include the taxing power of the State.

Obviously, given this new power, the landlords have little to fear from any tax on land values they deem too heavy. With their influence in local government circles, they will seldom if ever experience difficulty in getting local politicians to side with them, and we may confidently expect to see local governments petitioning for bankruptcy whenever the tax rate is thought by the private collectors of ground rent to be too heavy.

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IN a study on "Urban Planning and Land Policies" recently released by the National Resources Planning Board, George A. Blair analyzes the probable effects of a graded tax on land values for municipalities. His conclusions are: 1—The burden on vacant land would reduce speculation and stimulate building. 2—The burden on business property would induce improvements of squalid buildings. 3—Tenements in larger cities would tend to be improved. 4—Home ownership would be promoted, and housing projects would be encouraged. Mr. Blair's study was based on data obtained from fifteen municipalities.

Greece

Her Economic Background

By PAVLOS GIANNELIA

ONCE again in her long history, Greece is indicating to her wavering neighbors that there is another answer than unconditional submission to be given to the all-levelling march of empire and to the threat of devastating weapons.

While the immediate outcome is still uncertain, the world has been inspired to witness a new Thermopylae, another Marathon, a second Salamina.

But these are military and political matters. Though they are more spectacular, behind them lies the economic question. What is the economic background of Greece? To understand this question, it is necessary to delve into the Greek tradition leading up to the present.

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After many centuries of tithe-collecting governments, after Hammurbian, Egyptian and Mosaic legislations in the near East, after Aegean and Homeric rulings in Greece, there arose Lycurgus, the man whom the Delphic Oracle pronounced as "god rather than man." Lycurgus gave his laws to Sparta, the forerunner of totalitarian governments. The laws were a multitude of minute prescriptions, concerning not only landed property and government, but also the organization of the family, the education of the children, private life itself.

Sparta was a military community, and the Spartans constituted a permanent army. At his birth, the Spartan was examined by a council, and only if found physically fit was he given to his mother. The Spartan's birthright was 17 acres of the public land. At the age of seven his formal education began. He was introduced into a group of children who were led by a boy distinguished for his intelligence and valor. Physical training occupied the chief place in his education. Girls went through the same physical training as the boys. At twenty the Spartan entered the army; at thirty he became a citizen, but was obliged to coninue his military life.

In addition to the soldiers, the mass of Spartan population consisted of *perioekes* (neighbors), who were nominally free men; *helotes*, servile peasants, though not slaves; and pure slaves, who are rarely mentioned by ancient authors. The *perioekes*, permitted to own land in certain areas, practiced agriculture, trade, the arts and manufacturing. *Helotes* were similar to the Medieval feudal tenants, not permitted to leave the land they cultivated.

Quite a different set of laws from those of Lycurgus were those of Solon, the *archon* of Athens, to whom his fellow citizens entrusted (in 594 B. C.) the formulation of laws which should reconcile the nobles and the people. Besides his more transient measure (*seisachthia*) for settling the dis-